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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,521	08/19/2003	Rolf W. Reisgies	034664-0141	4464
23524	7590	11/23/2004	EXAMINER	
			SMITH, KIMBERLY S	
		ART UNIT		PAPER NUMBER
				3644

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/643,521	REISGIES, ROLF W.
	Examiner	Art Unit
	Kimberly S Smith	3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 August 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
 - 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 11-17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 August 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION***Response to Arguments***

1. Applicant's arguments filed 08/30/04 have been fully considered but they are not persuasive. Regarding the Applicant's statement that Ferris fails to show a plurality of wheeled carriage where each has a carriage body and adjustably mounted detachable wheels. The Applicant is correct in stating that Ferris does not teach adjustably mounted. However, the rejection was based under 35 USC 103. As such, the Ferris reference was modified by the White reference in order to teach the use of adjustably mounted wheels. Ferris however does teach a plurality of wheeled carriages having a carriage body. A carriage is defined as a moveable part of a machine for supporting some other moveable object or support. As such, the axle mechanism taught by Ferris meets the structural definition of a carriage and as can be seen in the Figures of Ferris, there is more than one thereby meeting the definition of a plurality. Further it is noted that wheels on a motor vehicle are notoriously well known to be detachable so as to be able to be changed and replaced in the event of a flat tire or extreme wear.

2. In response to applicant's argument that the plurality of wheeled carriages, once transported, are removed from the milking parlor frame, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The rejection stands.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferris, US Patent 3,019,763 in view of White, 6,609,477.

Ferris discloses a modular milking parlor comprising a frame base, plurality of upright members, at least one longitudinal support member attached to the upright support members, detachable wheels (as wheels on motor vehicles are inherently and notoriously well known to be detachable from the vehicle) and a plurality of milking stations (as seen in the figures) including a means for raising and lowering the platform to the ground for lessening the climb of the cows to the unit. However, Ferris does not teach the wheels being adjustably mounted so as to raise and lower with respect to the carriage body. White teaches within the analogous art of animal related trailers means for adjustably mounting the wheels (via hydraulic operation) to raise and lower them with regards to the platform to reduce the climb for the animal to enter the trailer. Because these two structures for lowering and raising a platform to reduce the vertical distance required by the animal to enter the device were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the hydraulic system taught by White for the jacking system disclosed by Ferris.

Regarding claim 13, Ferris as modified discloses the invention as claimed with the exception of the use of steel T-beams. It would have been an obvious matter of design choice to design the frame base with T-beams since the applicant has not disclosed that the T-beams solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the use of an I-beam or an L-beam. Further, Ferris as modified does not positively disclose the structure is made from steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 14, Ferris as modified discloses the use of holes in the frame base (60) with the exception of positively disclosing their positioning within the frame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the holes in upright webs of the T-beams of the base, since it has been held that rearranging parts of an invention involves only routine skill in the art. As such, the frame may be connected to the wheeled carriage by the holes if so desired as it has been held that the recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Regarding claim 15, Ferris as modified discloses the frame base including a front longitudinal member and a back longitudinal member that are parallel to each other and wherein a plurality of lateral members extend between and are attached to the front and back longitudinal members.

Regarding claim 17, Ferris as modified discloses groups of milk hoses, vacuum lines and control lines extending from each of the milking stations together to a longitudinal end of the milking parlor

5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ferris as modified as applied to claim 12 above, and further in view of van der Lely, US Patent 6,044,793.

Ferris as modified discloses the invention substantially as claimed including the structure containing all of the equipment needed for milking a animal. However, Ferris as modified does not disclose the milking station containing an automatic teat cup cluster detacher with a support arm for supporting a teat cup cluster. It would have been obvious to one having ordinary skill in the art to use an automatic teat cup cluster detacher with a support arm in conjunction with the milking parlor of Ferris as modified as it was known in the art at the time the invention was made to use an automated teat cup cluster as seen in van der Lely in conjunction with a milking parlor in order to milk a plurality of cows at one time.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 3644

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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